

## National Credit Union Administration

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(12) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement provided that the Regional Director gives prior approval to the translation.

[68 FR 23382, May 2, 2003, as amended at 71 FR 67439, Nov. 22, 2006; 73 FR 56936, Oct. 1, 2008]

### PART 741—REQUIREMENTS FOR INSURANCE

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AUTHORITY: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

SOURCE: 60 FR 58504, Nov. 28, 1995, unless otherwise noted.

#### § 741.0 Scope.

The provisions of this part apply to federal credit unions, federally insured state-chartered credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act, unless the context of a provision indicates its application is otherwise limited. This part prescribes various requirements for obtaining and maintaining federal insurance and the payment of insurance premiums and capitalization deposit. Subpart A of this part contains substantive requirements that are not codified elsewhere in this chapter. Subpart B of this part lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to federally insured state-chartered credit unions. As used in this part, "insured credit union" means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

**Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA’s Regulations**

**§ 741.1 Examination.**

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

**§ 741.2 Maximum borrowing authority.**

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

(b) A federally insured state-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable state law or by the state regulator. The waiver request must include:

- (1) Written approval from the state regulator;
- (2) A detailed analysis of the safety and soundness implications of the proposed waiver;
- (3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and
- (4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured state-chartered credit union.

[60 FR 58504, Nov. 28, 1995, as amended at 69 FR 8547, Feb. 25, 2004]

**§ 741.3 Criteria.**

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) *Reserves*—(1) *General rule.* State-chartered credit unions are subject to section 216 of the Act, 12 U.S.C. 1790d, and to part 702 and subpart L of part 747 of this chapter.

(2) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in Title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Appropriation for Non-conforming Investments in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Appropriation for Non-conforming Investments exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union’s financial condition and policies are both safe and sound:

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(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and co-makers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, ex-

cept with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in § 741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term “undue risk to the NCUSIF” is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing in this section shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

[60 FR 58504, Nov. 28, 1995, as amended at 64 FR 41040, July 29, 1999; 65 FR 8593, Feb. 18, 2000; 67 FR 71094, Nov. 29, 2002]

### § 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium.

(b) *Definitions.* For purposes of this section:

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*Available assets ratio* means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered invest-

ments authorized under Section 203(c) of the Act (12 U.S.C. 1783(c)), to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

$$\frac{(\text{cash} + \text{market value of unencumbered investments}) - (\text{liabilities} + \text{contingent liabilities for which no provision for losses has been made})}{\text{aggregate amount of all insured shares from final reporting period of calendar year}}$$

*Equity ratio* means the ratio of:

(i) The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent liabilities

for which no provision for losses has been made) to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the equity ratio is:

$$\frac{(\text{insured credit unions' 1.0\% capitalization deposits} + (\text{NCUSIF's retained earnings} - \text{contingent liabilities for which no provision for losses has been made}))}{\text{aggregate amount of all insured shares}}$$

*Insured shares* means the total amount of a federally-insured credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter. For a credit union or other entity that is not federally insured, "insured shares" means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.

*Modified premium/distribution ratio* means one minus the premium/distribution ratio.

*Normal operating level* means an equity ratio not less than 1.2 percent and

not more than 1.5 percent, as established by action of the NCUA Board.

*Premium/distribution ratio* means the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.

*Reporting period* means calendar year for credit unions with total assets of less than \$50,000,000 and means semi-annual period for credit union with total assets of \$50,000,000 or more.

(c) *One percent deposit.* Each insured credit union must maintain with the NCUSIF during each reporting period a deposit in an amount equaling one percent of the total of the credit union's insured shares at the close of the preceding reporting period. For credit unions with total assets of less than \$50,000,000, insured shares will be measured and adjusted annually based on the insured shares reported in the credit union's 5300 report for December 31 of each year. For credit unions with

total assets of \$50,000,000 or more, insured shares will be measured and adjusted semiannually based on the insured shares reported in the credit union's 5300 reports for December 31 and June 30 of each year.

(d) *Insurance premium charges*—(1) *In general.* Each insured credit union will pay to the NCUSIF, on dates the NCUA Board determines, but not more than twice in any calendar year, an insurance premium in an amount stated as a percentage of insured shares, which will be the same percentage for all insured credit unions.

(2) *Relation of premium charge to equity ratio of NCUSIF.* (i) The NCUA Board may assess a premium charge only if the NCUSIF's equity ratio is less than 1.3 percent and the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(ii) If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to at least 1.2 percent, as provided for in the restoration plan adopted under Section 202(c)(2)(D) of the Act (12 U.S.C. 1782(c)(20)(D)). If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, at least 1.2 percent, as provided for in the restoration plan adopted under Section 202(c)(2)(D) of the Act (12 U.S.C. 1782(c)(20)(D)).

(e) *Distribution of NCUSIF equity.* If, as of the end of a calendar year, the NCUSIF exceeds its normal operating level and its available assets ratio exceeds 1.0 percent, the NCUA Board will make a proportionate distribution of NCUSIF equity to insured credit unions. The distribution will be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level and does not reduce its available assets ratio below 1.0 percent. The distribution will be after the calendar year and in the form determined by the NCUA

Board. The form of the distribution may include a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

(f) *Invoices.* The NCUA provides invoices to all federally insured credit unions stating any change in the amount of a credit union's one percent deposit and the computation and funding of any NCUSIF premium or deposit replenishment assessments due. Invoices for federal credit unions also include any annual operating fees that are due. Invoices are calculated based on a credit union's insured shares as of the most recently ended reporting period. The invoices may also provide for any distribution the NCUA Board declares in accordance with paragraph (e) of this section, resulting in a single net transfer of funds between a credit union and the NCUA.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the calendar year in which it has obtained its charter will not be required to pay an insurance premium for that calendar year. The credit union will fund its one percent deposit on a date to be determined by the NCUA Board in the following calendar year, but will not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Depletion of one percent deposit.* All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion.

(i) *Conversion to Federal insurance.*

(1) A credit union or other institution that converts to insurance coverage with the NCUSIF will:

(i) Immediately fund its one percent deposit based on the total of its insured

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shares as of the last day of the most recently ended reporting period prior to the date of conversion;

(ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio;

(iii) If the NCUSIF declares, in the calendar year of conversion on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment;

(iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date; and

(v) If the NCUSIF declares a distribution in the year following conversion based on the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity from the end of the preceding year, the converting institution will receive no distribution.

(2) A federally-insured credit union that merges with a nonfederally insured credit union or other nonfederally insured institution (the "merging institution"), where the federally insured credit union is the continuing institution, will:

(i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger;

(ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described

in paragraph (i)(1)(ii) of this section, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger; and

(iii) If the NCUSIF declares a distribution in the year following the merger based on the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

(j) *Conversion from, or termination of, Federal share insurance.*

(1) A federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a non-credit union entity, will:

(i) Receive the full amount of its NCUSIF deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, immediately after the final date on which any shares of the credit union are NCUSIF-insured;

(ii) If the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio; and

(iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the

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difference following completion of the conversion or merger.

(2) Notwithstanding the requirements of paragraph (j)(1) of this section:

(i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit;

(ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, prior to final distribution of member shares; and

(iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union must pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked or electronically posted later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and loan Rate in effect on the date when the loan payment is due as provided in 31 U.S.C. 3717.

(4) The Act contains specific penalties and other consequences for delinquent payments, including, but not limited to:

(i) Section 202(d)(2)(B) of the Act (12 U.S.C. 1782(d)(2)(B)) provides that the Board may assess and collect a penalty from an insured credit union of not more than \$20,000 for each day the credit union fails or refuses to pay any deposit or premium due to the fund; and

(ii) Section 202(d)(3) of the Act (12 U.S.C. 1782(d)(3)) provides, generally, that no insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge due to the fund. Section 202(d)(3) further provides that any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned more than one year, or both.

[74 FR 63279, Jan. 4, 2010]

### § 741.5 Notice of termination of excess insurance coverage.

In the event of a credit union's termination of share insurance coverage other than that provided by the NCUSIF, the credit union must notify all members in writing of such termination at least thirty days prior to the effective date of termination.

### § 741.6 Financial and statistical and other reports.

(a) Upon written notice from the Board, Regional Director, or Director of the Office of Corporate Credit Unions, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Credit unions with the capacity to do so must use NCUA's information management system to submit their data online. If a credit union is unable to use the information system, it must file written reports in accordance with the instructions.

(1) *Credit Union Profile.* Insured credit unions must submit to NCUA a Credit Union Profile, NCUA Form 4501 or its equivalent, within 10 days after an election or appointment of senior management or volunteer officials or within 30 days of any change of the information in the profile.

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(2) *Financial and statistical report.* Natural person credit unions must file a Call Report with NCUA quarterly in accordance with the instructions in the NCUA Form 5300. Corporate credit unions must file a Corporate Credit Union Call Report with NCUA monthly in accordance with the instructions in the NCUA Form 5310. Credit unions must submit a corrected Call Report upon notification or the discovery of a need for correction.

(b) *Consistency with GAAP.* The accounts of financial statements and reports required to be filed quarterly under paragraph (a) of this section must reflect GAAP if the credit union has total assets of \$10 million or greater, but may reflect regulatory accounting principles other than GAAP if the credit union has total assets of less than \$10 million (except that a Federally-insured State-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

(c) *GAAP sources.* GAAP means generally accepted accounting principles, as defined in §715.2(e) of this chapter. GAAP is distinct from GAAS, which means generally accepted auditing standards, as defined in §715.2(f) of this chapter. Authoritative sources of GAAP include, but are not limited to, pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor organizations, the Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA), the FASB's Emerging Issues Task Force (EITF), and the applicable AICPA Audit and Accounting Guide.

[60 FR 58504, Nov. 28, 1995, as amended at 64 FR 41040, July 29, 1999; 67 FR 12464, Mar. 19, 2002; 71 FR 4034, Jan. 25, 2006; 74 FR 35769, July 21, 2009]

## §741.7 Conversion to a state-chartered credit union.

Any federal credit union that petitions to convert to a state-chartered federally insured credit union is required to apply to the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this part. If the application for continued insurance is not approved, such insurance will ter-

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minate subject to the conditions set forth in section 206(d) of the Act.

## §741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under §701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under §701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under part 708b.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union is headquartered. A corporate credit union seeking approval under paragraph (a) of this section must submit a letter to the Office of Corporate Credit

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Unions. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The NCUA will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

[70 FR 75725, Dec. 21, 2005, as amended at 75 FR 34622, June 18, 2010]

### § 741.9 Uninsured membership shares.

Any credit union that is insured pursuant to Title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745 of this chapter.

### § 741.10 Disclosure of share insurance.

Any credit union which is insured pursuant to Title II of the Act and is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units (or, for low-income designated credit unions, any nonmembers), shall identify such nonmember accounts as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union shall advise any present nonmember share and deposit holders by letter that their accounts are not insured by the NCUSIF. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

### § 741.11 Foreign branching.

(a) *Application and Prior NCUA Approval Required.* Any credit union insured under Title II of the Act must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is lo-

cated on a United States military installation or embassy outside the United States. The regional director will have 60 days to approve or deny the request.

(b) *Contents of Application.* The application must include a business plan, written approval by the state supervisory agency if the applicant is a state-chartered credit union, and documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action, including conservatorship and liquidation actions.

(c) *Contents of Business Plan.* The written business plan must address the following:

(1) Analysis of market conditions in the area where the branch is to be established;

(2) The credit union's plan for addressing foreign currency risk;

(3) Operating facilities, including office space/equipment and supplies;

(4) Safeguarding of assets, bond coverage, insurance coverage, and records preservation;

(5) Written policies regarding the branch (shares, lending, capital, charge-offs, collections);

(6) The field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided;

(7) Detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year including assumptions;

(8) Internal controls including cash disbursement procedures for shares and loans at the branch;

(9) Accounting procedures used to identify branch activity and performance; and

(10) Foreign income taxation and employment law.

(d) *Revocation of Approval.* A state regulator that revokes approval of the branch office must notify NCUA of the action once it issues the notice of revocation. The regional director may revoke approval of the branch office for failure to follow the business plan in a material respect or for substantive and

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documented safety and soundness reasons. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board within 30 days of the date of the revocation letter.

(e) *Insurance Coverage.* Accounts at foreign branches are insured by the NCUSIF only if denominated in U.S. dollars and only if payable, by the terms of the account agreement, at a U.S. office of the credit union. If the host country requires insurance from its own system, accounts will not be insured by the National Credit Union Share Insurance Fund.

[68 FR 23030, Apr. 30, 2003]

### **Subpart B—Regulations Codified Elsewhere in NCUA’s Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions**

#### **§ 741.201 Minimum fidelity bond requirements.**

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in part 713 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than 35 days prior to the effective date of such termination.

(b) Corporate credit unions must comply with § 704.18 of this chapter in lieu of part 713 of this chapter.

[60 FR 58504, Nov. 28, 1995, as amended at 64 FR 28721, May 27, 1999; 70 FR 61716, Oct. 26, 2005]

#### **§ 741.202 Audit and verification requirements.**

(a) The supervisory committee of each credit union insured pursuant to Title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year cov-

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ering the period elapsed since the last audit. The audit must fully meet the applicable requirements set forth in part 715 of this chapter or applicable state law, whichever requirement is more stringent.

(b) Each credit union which is insured pursuant to Title II of the Act shall verify or cause to be verified, under controlled conditions, all pass-books and accounts with the records of the financial officer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in § 715.8 of this chapter.

[60 FR 58504, Nov. 28, 1995, as amended at 64 FR 41040, July 29, 1999]

#### **§ 741.203 Minimum loan policy requirements.**

Any credit union which is insured pursuant to Title II of the Act must:

(a) Adhere to the requirements stated in part 723 of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state supervisory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board or, in the case of the member business loan requirements, if the state supervisory authority adopts member business loan regulations that are approved by the NCUA Board pursuant to § 723.20. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

(c) Adhere to the requirements stated in § 701.21(h) of this chapter concerning third-party servicing of indirect vehicle loans. Before a state-chartered credit union applies to a regional director for a waiver under § 701.21(h)(2), it must first notify its state supervisory authority. The regional director will not grant a waiver unless the appropriate state official concurs in the

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waiver. The 45-day period for the regional director to act on a waiver request, as described § 701.21(h)(3), will not begin until the regional director has received the state official's concurrence and any other necessary information.

[60 FR 58504, Nov. 28, 1995, as amended at 63 FR 51802, Sept. 29, 1998; 64 FR 28733, May 27, 1999; 71 FR 36667, June 28, 2006]

### **§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.**

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of § 701.32 of this chapter will be made and reviewed on the same basis as that provided in § 701.32 of this chapter for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate regional director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.34(a) of this chapter for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

(c) Receive secondary capital accounts only if the credit has a low-income designation pursuant to paragraph (b) of this section, and then only in accordance with the terms and conditions authorized for Federal credit unions pursuant to § 701.34(b)(1) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions offering secondary capital accounts must submit

the plan required by § 701.34(b)(1) to both the state supervisory authority and the NCUA Regional Director for approval. The state supervisory authority must approve or disapprove the plan with the concurrence of the appropriate NCUA Regional Director.

(d) Redeem secondary capital accounts only in accordance with the terms and conditions authorized for federal credit unions pursuant to § 701.34(d) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions seeking to redeem secondary capital accounts must submit the request required by § 701.34(d)(1) to both the state supervisory authority and the NCUA Regional Director. The state supervisory authority must grant or deny the request with the concurrence of the appropriate NCUA Regional Director.

[60 FR 58504, Nov. 28, 1995, as amended at 61 FR 3792, Feb. 2, 1996; 71 FR 4240, Jan. 26, 2006]

### **§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.**

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) of this chapter must adhere to the requirements stated in § 701.14(c) of this chapter concerning the prior notice and NCUA review. Federally insured state-chartered credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14 (d)(2) and (f) of this chapter. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1) of this chapter.

### **§ 741.206 Corporate credit unions.**

Any corporate credit union insured pursuant to Title II of the Act shall adhere to the requirements of part 704 of this chapter.

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**§ 741.207 Community development revolving loan program for credit unions.**

Any credit union which is insured pursuant to Title II of the Act and is a "participating credit union," as defined in § 705.3 of this chapter, shall adhere to the requirements stated in part 705 of this chapter.

**§ 741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.**

Any credit union which is insured pursuant to Title II of the Act and which merges with another credit union or non-credit union institution, and any state-chartered credit union which voluntarily terminates its status as a federally-insured credit union, or converts from federal insurance to other insurance from a government or private source authorized to insure member accounts, shall adhere to the applicable requirements stated in section 206 of the Act and parts 708a and 708b of this chapter concerning mergers and voluntary termination or conversion of insured status.

**§ 741.209 Management official interlocks.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 711 of this chapter concerning management official interlocks, issued under the provisions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.).

**§ 741.210 Central liquidity facility.**

Any credit union which is insured pursuant to Title II of the Act and is a member of the Central Liquidity Facility, shall adhere to the requirements stated in part 725 of this chapter.

**§ 741.211 Advertising.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements prescribed by part 740 of this chapter.

**§ 741.212 Share insurance.**

(a) Member share accounts received by any credit union which is insured pursuant to Title II of the Act in its

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usual course of business, including regular shares, share certificates, and share draft accounts, are insured subject to the limitations and rules in subpart A of part 745 of this chapter.

(b) The payment of share insurance and the appeal process applicable to any credit union which is insured pursuant to Title II of the Act are addressed in subpart B of part 745 of this chapter.

**§ 741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable rules of practice and procedures for administrative actions and adjudicative hearings prescribed by part 747 of this chapter. Subpart E of part 747 of this chapter applies only to federal credit unions.

**§ 741.214 Report of crime or catastrophic act and Bank Secrecy Act compliance.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 748 of this chapter.

**§ 741.215 Records preservation program.**

Any credit union which is insured pursuant to Title II of the Act shall maintain a records preservation program as prescribed by part 749 of this chapter.

**§ 741.216 Flood insurance.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 760 of this chapter.

**§ 741.217 Truth in savings.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 707 of this chapter.

**§ 741.218 Involuntary liquidation and creditor claims.**

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable provisions in part 709 of this chapter. Section 709.3 of

this chapter applies only to federal credit unions.

**§ 741.219 Investment requirements.**

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 703 of this chapter concerning transacting business with corporate credit unions.

[62 FR 12949, Mar. 19, 1997]

**§ 741.220 Privacy of consumer financial information.**

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 716 of this chapter.

[65 FR 31750, May 18, 2000]

**§ 741.221 Suretyship and guaranty requirements.**

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under state law.

[69 FR 8548, Feb. 25, 2004]

**§ 741.222 Credit union service organizations.**

(a) Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in §§ 712.3(d)(3) and 712.4 of this chapter concerning agreements between credit unions and their credit union service organizations (CUSOs) and the requirement to maintain separate corporate identities. For purposes of this section, a CUSO is any entity in which a credit union has an ownership interest or to which a credit union has extended a loan and that is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including check cashing services, sale of

negotiable checks, money orders, and electronic transaction services, including international and domestic electronic fund transfers, to persons eligible for membership in any credit union having a loan, investment or contract with the entity.

(b) This section shall have no preemptive effect with respect to the laws or rules of any state providing for access to CUSO books and records or CUSO examination by credit union regulatory authorities.

(c) The effective date for compliance with this section is June 29, 2009.

[73 FR 79313, Dec. 29, 2008]

**§ 741.223 Registration of residential mortgage loan originators.**

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 761 of this chapter.

[75 FR 44704, July 28, 2010]

**APPENDIX A TO PART 741—EXAMPLES OF PARTIAL-YEAR NCUSIF ASSESSMENT AND DISTRIBUTION CALCULATIONS UNDER § 741.4**

The following examples illustrate the calculation of deposit and premium assessments under each circumstance addressed in paragraphs (i) and (j) of § 741.4.

*A. Direct Conversion to NCUSIF Insurance*

1. Paragraph (i)(1)(i) provides that a credit union or other institution that converts to insurance coverage with the NCUSIF will immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.

i. The following hypothetical illustrates the application of this provision. Assume Main Street Credit Union completes its conversion from nonfederal to federal insurance on May 15 of Year One. Assume further that Main Street credit union had 1,000 insured shares for the end of month in December of the previous year (Year zero), 1,100 insured shares for at the end of May, the month of conversion, and 1,200 insured shares at the end of June. This information is presented in this Table A:<sup>1</sup>

<sup>1</sup>Although Main Street Credit Union was not federally insured as of December 31 of Year Zero, proposed § 741.4(b)(3) provides that “For a credit union or other entity that is not federally insured, ‘insured shares’ means,

for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.”

TABLE A

	End of month, December, year zero	End of month, May, year one (month con- version com- pleted)	End of month, June, year one
Main Street Credit Union's Federally Insured Shares .....	1,000	1,100	1,200

ii. Paragraph (i)(1)(i) requires that on the date of its conversion, Main Street fund its one percent deposit based on “the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.” Since Main Street has less than \$50,000,000 in assets, its reporting period is annual, and ends on December 31. 12 CFR 741.4(b)(6) (definition of “reporting period”). Main Street had \$1,000 in insured shares on that date, and one percent of that is \$10, and so that is the amount Main Street must immediately remit to the NCUSIF to establish its one percent deposit.

2. Paragraph (i)(1)(ii) provides that a credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF assesses a premium in the calendar year of conversion, pay a premium

based on the institution’s insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution’s premium/distribution ratio \* \* \*.

i. To illustrate the application of paragraph (i)(1)(ii), take the same facts in hypothetical A related to the conversion of Main Street from nonfederal to federal insurance. Now, further assume that on the previous March 15, NCUA had declared a premium assessment, and on September 15 following the conversion NCUA sent out the invoices for the March 15 assessment. Also assume that Main Street had grown to 1,300 insured shares at the end of September, the month the invoices were sent to Main Street and other credit unions. This information is presented in this Table B:

TABLE B

	End of month, December, year zero	End of month, May, year one (month con- version com- pleted)	End of month, June, year one	End of month, September, year one (month invoice sent)
Main Street Credit Union's Federally Insured Shares .....	1,000	1,100	1,200	1,300

ii. Paragraph (i)(1)(ii) requires Main Street pay a premium based on the institution’s “insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution’s premium/distribution ratio.” Again, because Main Street is under \$50 million in assets, the most recently ended reporting period preceding the September 15 invoice date is all the way back to December of Year Zero, when Main Street had \$1,000 in shares. Main Street’s “premium/distribution ratio,” as defined in §741.4(b)(5), is “the number of full remaining months in the calendar year following the date of the institution’s conversion or merger divided by 12.” Since Main Street completed its conversion in May, there are seven full months remaining in the calendar year (June through December), and Main Street’s premium/distribution ratio is seven divided by 12. Accordingly, Main Street’s premium will be assessed on \$1,000 times seven divided by 12, or about \$583.<sup>2</sup>

<sup>2</sup>Main Street’s actual premium charge will be this \$583 divided by the aggregate insured

Note that if Main Street’s assets had exceeded \$50 million as of June 30, it would have had semiannual reporting periods under §741.4(b)(6), and its “insured shares as of the last day of the most recently ended reporting period preceding the invoice date” would have been its insured shares as of June 30, Year One, and not as of December 31, Year Zero.

3. Paragraphs (i)(1)(iii) and (iv) describe the responsibility of a credit union or other entity converting to federal insurance to replenish a depleted NCUSIF deposit, as follows: A credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF declares, in the calendar year of conversion but on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment; if the NCUSIF declares, at any time after the date of conversion through the end of that calendar

shares of all federally insured credit unions times the aggregate premium for all federally insured credit unions.

year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date.

i. Paragraph (i)(1)(iii) clarifies that a converting credit union has no responsibility to pay anything toward the replenishment of a depleted deposit that is declared on or before the date of conversion, even if NCUA sends out invoices related to the depletion after

the date of conversion. Paragraph (i)(1)(iv) requires that a converting credit union replenish its deposit with regard to a depletion declared after the date of conversion through the end of the calendar year. Again, assume the same facts for Main Street as in Table B, but that the deposit depletion was announced in June, after Main Street converted, and that NCUA sent the invoices in September.

TABLE B

	End of month, December, year zero	End of month, May, year one (month conversion completed)	End of month, June, year one	End of month, September, year one (month invoice sent)
Main Street Credit Union's Federally Insured Shares .....	1,000	1,100	1,200	1,300

ii. Main Street would receive an invoice amount "based on the [Main Street's] insured shares as of the last day of the most recently ended reporting period preceding the invoice date." Since Main Street has less than \$50 million in shares, the most recently ended reporting period preceding the September invoice date was December 31, Year Zero, and it would pay for the replenishment based on \$1,000 in insured shares. If Main Street, however, had had \$50 million or more in assets on June 30, its most recently ended reporting period preceding the invoice date would have been the semiannual period ending on June 30, and Main Street would have used its insured shares as of June 30 to calculate the replenishment amount due to the NCUSIF.

4. Under the Federal Credit Union Act, distributions, if any, are declared once a year, early in the year, based on excess funds in the NCUSIF as of the prior December 31. Paragraph (i)(1)(v) describes the right of a credit union or other entity converting to federal insurance to receive a distribution from the NCUSIF, specifically: A credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF declares a distribution in the year following conversion based on the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity at the end of the preceding year, the converting institution will receive no distribution.

i. To illustrate how paragraph (i)(1)(v) works, assume that Main Street Credit Union converts to federal insurance in May of Year One, and that the NCUA declares a distribution in January of Year Two based on the NCUSIF equity as of December 31 of

Year One. Then Main Street will be entitled to a pro rata portion of the distribution, calculated on its insured shares as of December 31 of Year One times its premium/distribution ratio. Since it converted in May of Year One, and there were seven full months remaining in Year One at on the date of conversion, Main Street's premium/distribution ratio under §741.4(b)(6) equals seven divided by 12.

ii. On the other hand, if the NCUA declared a distribution a year earlier, that is, in January of Year One based on the NCUSIF's equity ratio as of December 31 in Year Zero, then under paragraph (i)(1)(v) Main Street would receive no part of this distribution. Main Street is not entitled to any part of this distribution because Main Street, which completed its conversion in Year One, did not contribute in any way to the excess funds in the NCUSIF as of the end of Year Zero.

*B. Conversion to NCUSIF Coverage Through Merger with a Federally Insured Credit Union.*

Paragraph (i)(2) addresses the NCUSIF premiums, deposit replenishments, and distribution calculations when a nonfederally insured credit union or entity converts to NCUSIF coverage by merging with a federally insured credit union.

1. Paragraph (i)(2)(i) provides that a federally-insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the "merging institution"), where the federally-insured credit union is the continuing institution, will immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger.

i. To illustrate this provision, and the other provisions of paragraph (i)(2) related to

mergers of nonfederally insured entities into federally-insured credit unions, consider the following hypothetical. Nonfederally-insured Credit Union A merges into federally-insured Credit Union B on August 15 of Year One.

The relevant insured shares of Credit Union A and Credit Union B at various dates before and after the merger are reflected in Table D:

TABLE D

	End of month December, year zero	End of month June, year one	End of month August, year one (month merger completed)	End of Month September, year one (month invoice sent)
Credit Union A Insured shares .....	1,000	1,100	N/A	N/A
Credit Union B Insured shares .....	9,000	9,900	12,900	14,000

ii. Paragraph (i)(2)(i) requires that Credit Union B, the continuing credit union, immediately increase the amount of its deposit with the NCUSIF in an amount “equal to one percent of the merging institution’s insured shares as of the last day of the merging institution’s most recently ended reporting period preceding the date of merger.” Since Credit Union A, the merging institution, has less than \$50 million in assets, its reporting period is the calendar year, and its most recently ended reporting period preceding the August merger date is December 31 in Year Zero. Credit Union A had \$1,000 in insured shares on that date. Accordingly, Credit Union B, the continuing credit union, must immediately increase the amount of its deposit with the NCUSIF by one percent of \$1,000, or \$10. Note that if Credit Union A had been a larger credit union, with \$50 million or more in assets on June 30 in Year One, then Credit Union B would have used Credit Union A’s insured shares as of June 30 in this calculation.

2. Paragraph (i)(2)(ii), relating to NCUSIF premium assessments, provides that the continuing institution will, with regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution’s insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution’s insured shares as of the last day of its most recently ended reporting period preceding the date of merger.

i. Paragraph (i)(2)(ii) provides for a two-part calculation, with the first part relating to the merging credit union and the second part relating to the continuing credit union. Assuming the facts as in Table D, and assuming the premium is assessed sometime in Year One, calculate the insured shares of Credit Union A, the merging credit union, as in the example for paragraph (i)(1)(ii). Once again, because Credit Union A is under \$50 million in assets, the most recently ended reporting period preceding the invoice date is December of Year Zero, when Credit Union A had \$1,000 in shares. The merger was com-

pleted in August, leaving four full months in the calendar year, so the premium/distribution ratio is four divided by 12. Accordingly, this part of the premium will be assessed on \$1,000 times four divided by 12, or about \$333. Then calculate the insured shares of Credit Union B, the continuing credit union, “as of the last day of its most recently ended reporting period preceding the merger date.” Since Credit Union B is also under \$50 million in assets, “the last day of the most recently ended reporting period” is also December 31 of Year Zero. Credit Union B’s insured shares on that date were \$9,000, and so the combined insured shares for purposes of the premium assessment is \$9,333. Note that if Credit Union B had \$50 million or more in assets on June 30 of Year One, then Credit Union B’s “most recently ended reporting period preceding the merger date” would have been June 30 of Year One, and not December 31 of Year Zero. The Board is aware that the NCUA might declare a NCUSIF premium, invoice it, and receive the premiums in Year One from the continuing institution before the continuing institution consummates its merger. In that case, the Board would invoice the continuing credit union again after the merger, but only for the difference between the amount previously invoiced and the amount calculated under paragraph (i)(2)(ii).

3. Paragraph (i)(2)(iii) prescribes the procedures for calculating the NCUSIF distribution when a nonfederally insured credit union or entity merges into a federally insured credit union. Paragraph (i)(2)(iii) provides that the federally insured credit union will, if the NCUSIF declares a distribution in the year following the merger based on the NCUSIF’s equity at the end of the year of merger, receive a distribution based on the continuing institution’s insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF’s equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

i. This formula recognizes that the merging institution did not contribute to the NCUSIF equity as of the end of the year preceding the merger and so no distribution is allotted against the merging institution's shares. As for distributions based on the NCUSIF equity at the end of the year of merger, this formula does not include any pro rata reduction for the merging institution's contribution. The Board determined that a pro rata reduction was unnecessary, given the generally small relative size of merging institutions to continuing institutions, and the fact that the Federal Credit Union Act does not require any sort of pro rata reduction or other pro rata calculation with regard to distributions.

*C. Conversion from, or termination of, Federal share insurance.*

Paragraph (j)(1) addresses direct insurance conversions and conversions by merger. Paragraph (j)(2) addresses liquidations and insurance termination.

1. Paragraph (j)(1)(i) provides that a federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will receive the full amount of its NCUSIF deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, immediately after the final date on which any shares of the credit union are NCUSIF-insured.

i. To illustrate the application of this paragraph (j)(1)(i), consider the following hypothetical. Assume Anytown Credit Union, a credit union with \$30 million in assets, converts from federal to nonfederal insurance on November 15. Also assume Anytown Credit Union had \$20 million in insured shares as of the previous December 31, the end of its most recent reporting period. 12 CFR 741.4(b)(5), (c). The NCUSIF would return one-percent of \$20 million, or \$200,000 to Anytown Credit Union immediately following the effective date of its conversion. Note that, if Anytown Credit Union had reported \$50 million or more in assets on June 30, then June 30 would have been the end of its most recent reporting period. Now further assume that, on July 15 of that same year, the NCUSIF had announced an expense that reduced the equity ratio from 1.3 to .75, which would have included a write-off (depletion) of 25%, or 25 basis points, of the one-percent deposit. The amount of the deposit returned to Anytown would be reduced by 25%, from \$200,000 to \$150,000. If the NCUSIF had announced expenses reducing the equity ratio to .75 after the November 15 conversion date, this announcement would have no effect on Anytown and it would still receive the full \$200,000 from the NCUSIF.

2. Paragraph (j)(1)(ii) provides that a federally insured credit union whose insurance

coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will, if the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio.

i. To illustrate the application of this paragraph (j)(1)(ii), again assume Anytown Credit Union converts to nonfederal insurance on November 15, and in January of the following year, the NCUSIF declares a distribution based on the NCUSIF's equity ratio as of December 31. Anytown would receive a pro rata distribution calculated as its \$20 million in insured shares multiplied by the modified premium/distribution ratio. Anytown's modified premium/distribution ratio, from the definition in §741.4(b)(5), is one minus Anytown's premium/distribution ratio, which is one minus the ratio of the full number of months remaining in the year divided by twelve, which is one minus (one divided by twelve), which is eleven divided by twelve. So Anytown would receive a pro rata distribution based on \$20 million of insured shares times eleven-twelfths, or based on about \$18.33 million in shares.<sup>3</sup>

3. Paragraph (j)(1)(iii) provides that a federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will, if the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

i. To illustrate these premium provisions, again assume Anytown Credit Union is a credit union with \$30 million in assets that converts from federal to nonfederal insurance on November 15 of Year One, and that Anytown Credit Union had \$20 million in insured shares as of the previous December 31

<sup>3</sup>Anytown's actual distribution would be \$18.33 million times the aggregate amount of the distribution divided by the aggregate amount of all insured shares at all federally insured credit unions.

(of Year Zero), the end of its most recent reporting period. Further assume that NCUA declares a premium on February 12 of Year One and invoices the premium on November 15. Since the premium was declared “on or before the day in which [Anytown’s] conversion [was] completed,” §741.4(j)(1)(iii) applies. Anytown would then pay a premium based on \$20 million (its “insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date”) times eleven-twelfths (its “modified premium/distribution ratio”), or based on about \$18.33 million. Note that NCUA might have already have invoiced Anytown for the premium sometime between February 12 and Anytown’s merger on November 15. If so, Anytown will likely receive a refund of some of this earlier premium, as provided in the last sentence of §741.1(j)(1)(iii), since it may have overpaid the earlier premium.

[74 FR 63281, Dec. 3, 2009]

## PART 742—REGULATORY FLEXIBILITY PROGRAM

Sec.

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AUTHORITY: 12 U.S.C. 1756, 1766.

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### § 742.1 Regulatory Flexibility Program.

NCUA’s Regulatory Flexibility Program (RegFlex) exempts from all or part of the NCUA regulatory restrictions identified elsewhere in this part credit unions that demonstrate sustained superior performance as measured by CAMEL rating and net worth classification. RegFlex credit unions also are authorized to purchase and hold an expanded range of obligations.

### § 742.2 Criteria to qualify for RegFlex designation.

(a) *Automatic qualification.* A credit union automatically qualifies for RegFlex designation, without formal notification, when it has:

(1) *CAMEL.* Received a composite CAMEL rating of “1” or “2” for the two (2) preceding examinations; and

(2) *Net worth.* Maintained a net worth classification of “well capitalized” under part 702 of this chapter for six (6)

consecutive preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained “well capitalized” for six (6) consecutive preceding quarters after applying the applicable RBNW requirement.

(b) *Application for designation.* A credit union that does not automatically qualify under paragraph (a) of this section may apply for a RegFlex designation, which may be granted in whole or in part upon notification by the appropriate Regional Director, provided the credit union has either:

(1) *CAMEL.* Received a composite CAMEL rating of “3” or better for the preceding examination; or

(2) *Net worth.* Maintained a net worth classification of “well capitalized” under part 702 of this chapter for less than six (6) consecutive preceding quarters or, if subject to an RBNW requirement under part 702 of this chapter, has remained “well capitalized” for less than six (6) consecutive preceding quarters after applying the applicable RBNW requirement.

### § 742.3 Loss and revocation of RegFlex designation.

(a) *Loss of authority.* RegFlex authority is lost when a credit union that qualified automatically under the CAMEL and net worth criteria in §742.2(a) no longer meets either of those criteria. Once the authority is lost, the credit union may no longer claim the exemptions and authority set forth in §742.4.

(b) *Revocation of authority.* The Regional Director may revoke a credit union’s RegFlex authority under §742.2, in whole or in part, for substantive, documented safety and soundness reasons. When revoking RegFlex authority, the regional director must give written notice to the credit union stating the reasons for the revocation. The revocation is effective upon the credit union’s receipt of notice from the Regional Director.

(c) *Appeal of revocation.* A credit union has 60 days from the date of the regional director’s determination to revoke RegFlex authority to appeal the action, in whole or in part, to NCUA’s Supervisory Review Committee. The Regional Director’s determination will